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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State of VIRGINIA

Regulation: 42 CFR 488.402(f) Enforcement of Compliance for Nursing Facilities (NFs) The Commonwealth shall comply with the Medicaid Program requirements of 42 CFR 488.300 et seq.

42 CFR §488.402(f)

(a) Notification of Enforcement Remedies. When taking an enforcement action against a non-State operated NF, the State provides notification in accordance with 42 CFR 488.402(f)

(i)The notice (except for civil money penalties and State monitoring) specifies the:

- (1) nature of noncompliance,
- (2) which remedy is imposed,
- (3) effective date of the remedy, and
- (4) right to appeal the determination leading to the remedy.

42 CFR §488.434

(ii)The notice for civil money penalties is in writing and contains the information specified in 42 CFR 488.434.

42 CFR §488.402(f)(3), (4),
(5)

(iii)Except for civil money penalties and State monitoring, notice is given at least two calendar days before the effective date of the enforcement remedy for immediate jeopardy situations and at least 15 calendar days before the effective date of the enforcement remedy when immediate jeopardy does not exist. The two and 15-day notice periods begin when the facility receives the notice, but, in no event will the effective date of the enforcement action be later than 20 calendar days after the notice is sent.

42 CFR §488.456(c) & (d)

(iv)Notification of termination is given to the facility and to the public at least two calendar days before the remedy's effective date if the noncompliance constitutes immediate jeopardy and at least 15 calendar days before the remedy's effective date if the noncompliance does not constitute immediate jeopardy. The State must terminate the provider agreement of a NF in accordance with procedures in parts 431 and 442.

42 CFR §488.404(b)(1)

(b) Factors to be Considered in Selecting Remedies

(i)In determining the seriousness of deficiencies, the

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State considers the factors specified in 42 CFR 488.404(b)(1) & (2).

Citation

The State considers additional factors. Attachment 4.35-A describes the State's other factors.

(c) Application of Remedies

42 CFR §488.410

(i) If there is immediate jeopardy to resident health or safety, the State terminates the NF's provider agreement within 23 calendar days from the date of the last survey or immediately imposes temporary management to remove the threat within 23 days.

42 CFR §488.417(b)(1)
§1919(h)(2)(C) of the Act

(ii) The State imposes the denial of payment (or its approved alternative) with respect to any individual admitted to a NF that has not come into substantial compliance within three months after the last day of the survey.

42 CFR §488.414
§1919(h)(2)(D)

(iii) The State imposes the denial of payment for new admissions remedy as specified in §488.417 (or its approved alternative) and a State monitor as specified at §488.422, when a facility has been found to have provided substandard quality of care on the last three consecutive standard surveys.

42 CFR §488.408(b)
§1919(h)(2)(A) of the Act

(iv) The State follows the criteria specified at 42 CFR §488.408(c)(2), §488.408(d)(2), and §488.408(e)(2), when it imposes remedies in place of or in addition to termination.

42 CFR §488.412(a)

(v) When immediate jeopardy does not exist, the State terminates a NF's provider agreement no later than six months from the finding of noncompliance, if the conditions of 42 CFR 488.412(a) are not met.

(d) Available Remedies

42 CFR §488.406(b)
§1919(h)(2)(A) of the Act

(i) The State has established the remedies defined in 42 CFR 488.406(b).

XXX (1) Termination

XXX (2) Temporary Management

XXX (3) Denial of Payment for New Admissions

XXX (4) Civil Money Penalties

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XXX (5) Transfer of Residents: Transfer of Residents with
Closure of Facility
XXX (6) State Monitoring

Attachment 4.35-B through 4.35-K describe the criteria for applying the above remedies, plan of correction, NF appeals, and repeated substandard quality of care.

42 CFR §488.406(b)
§1919(h)(2)(B)(ii) of the Act

(ii) The State uses alternative remedies. The State has established alternative remedies that the State will impose in place of a remedy specified in 42 CFR §488.406(b).

- (1) Temporary Management
- (2) Denial of Payment for New Admissions
- (3) Civil Money Penalties
- (4) Transfer of Residents: Transfer of Residents with
Closure of Facility
- (5) State Monitoring

Attachments 4.35-B through 4.35-G describe the alternative remedies and the criteria for applying them.

42 CFR §488.303(b)
§1919(h)(2)(F) of the Act

(e) State Incentive Programs

- (1) Public Recognition
- (2) Incentive Payments

42 CFR §488.452

(f) In the event that the Commonwealth and HCFA disagree on findings of noncompliance or application of remedies in a non-State operated NF or a dually participating facility when there is no immediate jeopardy, such disagreement shall be resolved in accordance with the provisions of 42 CFR §488.452 (1995).

42 CFR 488.302(c)

(g) The Commonwealth shall have the authority to apply one or more remedies for each deficiency constituting noncompliance or for all deficiencies constituting noncompliance.

42 CFR 488.454(d)

(h) As set forth by 42 CFR §488.454(d), remedies shall terminate on the date that HCFA or the Commonwealth can verify as the date that substantial compliance was achieved and the facility has demonstrated that it could maintain

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substantial compliance once the facility supplies documentation acceptable to HCFA or the Commonwealth that it was in substantial compliance and was capable of remaining in compliance.

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